

2.

## REMARKS/ARGUMENTS

The examiner is respectfully requested to reconsider his rejection of claim 1 as being unpatentable over Brochu (US 2004/0187394) in view of Meckstroth (US 6412228) as applied under 35 U.S.C. 103(a).

Claim 1 clearly calls for a main section comprising a perforated panel and an outer side section adjacent the main section having a channel. In applicant's structure, the channel is not part of the main section. The channel provides a gripping wall to be used in mounting the gutter cover. Meckstroth does not show a similar channel nor even a channel that provides a gripping wall. It is noted that the examiner defines the channel in Meckstroth as having a top wall (58), a bottom wall (76), and an end wall (A). It is noted however that the bottom wall (76) is part of the 'main section' of the cover which 'main section' includes, according to the examiner, elements 52, 68 and 71. Meckstroth, in col. 3, lines 56 and 57, states that the bottom wall 76 is an integral part of the channel 68 which channel the examiner states is part of the 'main section'. Obviously end wall A is then also a part of the 'main section' of the cover. If this is the case then Meckstroth does not show applicant's channel since claim 1 clearly states that the channel is separate from the main section while Meckstroth clearly shows part of channel being part of the main section.

Meckstroth shows a gutter cover 45 having an unperforated first intermediate section 52 with a second intermediate section 62 joining one side of the first intermediate section to an outer flange portion 58. The second intermediate section 62 has a channel 68 with slots 71 at the bottom of the channel to drain the water off the unperforated first intermediate section 52.

Meckstroth operates by directing water off the non-

...3

3.

perforated intermediate section 52 into the narrow channel 68 and out the slots 71 at the bottom of the channel into the gutter. Leaves and other debris coming off the intermediate section 52 fall onto the outer flange portion 58 and off the cover past the gutter.

The Meckstroth cover 45 is installed by first sliding the inner portion 48 of the cover under the roof covering or shingles and then pulling the outer flange portion 58 onto the gutter lip by the outwardly projecting lip portion 78 (see the description of this operation in the related earlier Meckstroth U.S. Pat. 5,459,965, which patent is referred to at the top of col. 1 of this Meckstroth patent). There is simply no teaching in Meckstroth that the cover 45 is pulled onto the lip of the gutter by using a vertical wall that can be gripped with the fingertips and pulled toward the installer. Certainly it is obvious that the wall 'A', pointed out by the examiner as being a wall that can be pulled, is in fact located within the channel 68 in the second intermediate section 62 and thus inaccessible to fingers to pull it, and thus the cover, outwardly to install the cover. In view of this it cannot be seen how it could be held to be obvious from the Meckstroth patent to install a vertical pulling wall on Brochu. No such pulling wall is disclosed or even suggested in Meckstroth.

It should be noted that Meckstroth requires the second intermediate section 62 with the channel 68 to get water to the gutter since the first intermediate section is not perforated. If the first intermediate section 52 were perforated, the second intermediate section 62 with the channel would be dispensed with and the section 52 would merge smoothly with the top of the outer flange section 58. The gutter would be installed by pulling on the outer flange section 58. There would be no upstanding wall to pull.

Even if it were obvious to install the channel construction (58, A, 76) of Meckstroth on the Brochu cover there is no teaching from Meckstroth that this channel would be installed on Brochu with the bottom leg (76) of the channel aligned with the first intermediate

...4

4.

section 52 of the cover, thereby placing the end wall (A) above the first intermediate section 52 so it can be gripped to pull the cover over the lip. Meckstroth shows a channel (58, A, 76) which is located well below the plane of the first intermediate section 52. The entire channel is below the plane of the first intermediate section 52. There is simply no teaching in Meckstroth that the channel (58, A, 76) can be located above the plane of the first intermediate section 52 so as to place the wall A above the plane in a position to be gripped. All Meckstroth would teach is replacing the elements 90, 92 and 94 shown in Fig. 5 in Brochu with the channel (58, A, 76) with the top leg 58 attached to the main perforated section 72.

The examiner states that the bottom wall 76 of the channel (58, A, 76) is 'aligned' with the 'main section' of the cover which 'main section' the examiner defines as elements 45, 68, 71. It would seem that the examiner is stretching the meaning of the word 'aligned' (placed in a line) to say that the bottom wall 76 is 'aligned' with the element 68 which element is perpendicular to the bottom wall.

The examiner's 'main section' includes element 45. Element 45 would appear to refer to the entire cover since element 45 includes the inner portion 48 (col. 3, lines 27, 28); the first flat intermediate portion 52 (col. 3, line 32); the second intermediate portion 68 and the outer flange portion 58. The examiner probably meant to include the first flat intermediate portion 52 as part of the 'main section'.

The applicant does not agree with the examiner's definition of a 'main section'. In this art it would appear that the 'main section' is the flat part of the cover that essentially covers the open mouth of the gutter. In Brochu, this is flat main portion 72 (para. 0032, lines 4, 5). In Meckstroth, this is flat intermediate portion 52. In Brochu (U.S. Pat. 6,427,388) a flat main portion 46 is referred to (col. 3, line 16). In Sweers (U.S. Pat. 5,555,680) a screen body 24, which is flat, is referred to. All the main sections

..5

5.

of gutter covers are flat members. The second intermediate portion 68 in Meckstroth merely serves to connect the flat main section (first intermediate section 52) to the to the outer flange portion 58 (col. 3, lines 41 to 45) and should not therefore be considered part of the 'main section'

It is rather obvious that the bottom leg of applicant's channel is aligned with the flat main section 43, and that an equivalent structure in Meckstroth should have the leg 76 of Meckstroth's channel aligned with the flat intermediate portion 52 of the cover in order to provide a gripping wall. However the leg 76 in Meckstroth is well below the plane of the intermediate cover portion 52 and is not close to being aligned with it.

In order to expedite matters, applicant's agent is quite prepared to define the 'main section 43' in claim 1 as being a 'flat main section 43'. If the amendment is permitted, the claim would clearly distinguish from Meckstroth as applied by the examiner since in Meckstroth, with elements 68 and 71 included in the main section, the main section is not flat. And if the main section in Meckstroth is taken as element 52 only, then leg 76 is not aligned with it. If the examiner is prepared to admit the amendment with a view to advancing the application to allowance, please phone applicant's agent so the amendment could be immediately submitted.

Reconsideration of the rejection is requested along with withdrawal of the Final Action.